

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 10678 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT
Versus
DOLATSINH CHHATRASINH RATHOD

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Appearance :

MR AJ DESAI, AGP for Petitioner.
MR DHIRENDRA MEHTA for Respondent.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 11/10/2005

ORAL JUDGMENT

By filing this petition, which is in the nature of a petition under Article 227 of the Constitution of India, the State of Gujarat has challenged the order passed by the Gujarat Revenue Tribunal dated 10th August, 1993. By the impugned order, the Gujarat Revenue Tribunal has

rejected the Review Application filed by the State of Gujarat being Review Application No.TEN/CS/24/92.

It is the case of the petitioner that vide order dated 3-1-1987, Mamlatdar and ALT, out of total land of the respondent, declared 16 Acres and 28 Gunthas as excess land under the provisions of the Agricultural Land Ceiling Act. The said order was challenged by the respondent herein by preferring the appeal before the Collector, Surat. The Deputy Collector, Land Reforms, Surat, came to the conclusion that except block No.1 of village Andhi, the respondent is entitled to hold all other lands. The aforesaid order of the Deputy Collector, Land Reforms, Surat was carried further before the Gujarat Revenue Tribunal by filing Revision Application No.TEN/BS/336/88 at the instance of the respondent herein. The tribunal by its order dated 24-7-1992 held that the applicant (Respondent herein) do not have any surplus land. Against the said order, Review Application No.TEN/CS/24/92 was preferred. The tribunal while deciding the said review application has observed that the land holder-respondent had shown that his family consists of seven members as on 1-4-1976 including himself, his wife Surajben, daughters Ilaben (age-14 years), Shilaben (age-12 years), Prafullaben (age-8

years) and minor son Jitendra (age-10 years) and, therefore, the tribunal had found that as the family of the respondent consisted of seven members the benefit under Section 6 (3-B) would be available to him and accordingly, 2/5th land would be available to the respondent and there would not be any surplus land with the land holder.

The argument of the State Government before the tribunal in Review Application was that there was only one minor son as on 1-4-1976 and therefore, the order passed by the Deputy Collector giving 1/5th additionality to the respondent herein was legal and proper and was in consonance with the decision of the Supreme Court. The tribunal while rejecting the review application has considered the decision of the Supreme Court in the case of **State of Gujarat v. Jat Lakshmanji Talasji** reported in 1988 (2) GLR 1036. The tribunal also found that the case was decided by considering the availability of benefit of under Section 6 (3-B) of the Act. The tribunal also found that the review application was barred by time and, ultimately, the tribunal rejected the review application on the ground of delay. It is the aforesaid order of the Gujarat Revenue Tribunal, which is impugned at the instance of the State Government in the present petition.

It is required to be noted that the order of the tribunal is of 1993 as against that this petition is filed after about five years in 1998. The matter was admitted ex-parte without notice to the other side and, therefore, the other side was not given any opportunity to contest the ground of delay at the time of admission of the matter. After admitting the matter on 15-10-1999, this Court has passed the following order.

"On the preliminary objection from the side of the respondent that latches in filing the petition have not been explained, learned A.G.P. requests time to file additional Affidavit. As prayed, two weeks time is granted for the purpose. In the meantime English translation of the Annexures to the writ petition in Gujarat be filed.

S.O.to 4/11/99."

It is required to be noted that till today, no additional affidavit has been filed by the State Government and unfortunately the matter is dealt with in an absolute casual manner. Before the tribunal, the review application was dismissed on the ground that the delay was not satisfactorily explained. Here also, this petition is filed after five years of passing of the impugned order.

Mr.A.J.Desai, learned AGP has tried to explain the delay in filing the petition by reading paragraph 5 of the petition, which is as under :

"5. That after getting the copy of the order passed by the Gujarat Revenue Tribunal a necessary action by the concerned department was taken to challenged the said order by way of Special Civil Application in this Hon'ble Court and proposal was made to the Legal Department and time consumed due to decision taken at the various stages and correspondence between inter department and intra-departmental correspondence the delay have been occurred in filing present petition, but as the order passed by the Tribunal is nullity and therefore there is no bar of delay and laches to the present petition."

This averment is vague as it can be seen that there is hardly any satisfactory explanation coming out from it for delay in filing the present petition. Not only that, after seeking time from the learned Single Judge for filing additional affidavit, no such affidavit has been filed even though more than six years have passed thereafter. It is a sorry state of affair and the State Government has taken this proceedings very casually. It is not in dispute that the original order by which the tribunal allowed the application of the respondent by holding that the respondent is not holding any excess land is not challenged. Not only that, the order passed

in Review Application is challenged after more than five years and that too without giving any satisfactory reasons for delay. In addition to this, even after six years of learned single Judge's order no additional affidavit is filed explaining such delay.

Considering the aforesaid total carelessness shown by the petitioner-State by even not explaining the delay of five years in approaching this Court and considering the fact that the tribunal has rejected the review application on the ground of delay, in my view, this petition is not required to be entertained and it cannot be said that the tribunal has committed any error, which is required to be corrected by this Court. Since no explanation is coming forward regarding inordinate delay of five years in filing this petition, though opportunity was given by the learned Single Judge by granting time for filing additional affidavit, this petition is required to be dismissed on the ground of delay and laches.

Accordingly, this petition is dismissed. Rule is discharged with no order as to costs.

(P.B.MAJMUDAR, J.)

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